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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,032	11/03/2003	Hani Sabbah	1059.00096	3424

7590

12/20/2005

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EXAMINER

AFREMOVA, VERA

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claims 1-14 are pending and subject to restriction requirement.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1 and 2, drawn to a method of treating heart failure and improving cardiac function by administering stem cell products to a heart, classified in class 424, subclass 9.1, for example.
- II. Claims 3-5 and 8-10, drawn to a therapeutic for treating heart failure, classified in class 514, subclass 21, for example.
- III. Claims 6 and 7, drawn to a method of enriching or regenerating damaged myocardium by administering stem cell products to damaged myocardium, classified in class 424, subclass 9.1, for example.
- IV. Claim(s) 11, drawn to a heart with stem cell products, classified in class 435, subclass 1.1, for example.
- V. Claim(s) 12, drawn to a composition for enriching or regenerating damaged myocardium comprising stem cell products, classified in class 424, subclass 93.7, for example.
- VI. Claim(s) 13, drawn to a composition for causing the expression of stem cell products, classified in class 514, subclass 1+, for example.
- VII. Claim(s) 14, drawn to a method of creating stem cell by enriching stem cell cultures under hypoxic conditions, classified in class 435, subclass 375, for example.

The inventions are distinct, each from the other because of the following reasons:

The methods of groups I, III and VII are drawn to different methods as claimed wherein the claimed methods comprise different active steps and results in different effects as claimed. The methods of groups I and III are drawn to in vivo applications, they encompass different sites of application of therapeutic agents and they result in different effects as claimed. The method VII encompasses in vitro application or in vitro active steps of manipulation stem cells or stem cell products.

Art Unit: 1651

The products of groups II, IV, V and VI are drawn to different compositions as claimed such as specific compounds, differentiated organ, cells and expression systems respectively.

Inventions of groups I, III and VII and Inventions of groups II, IV, V and VI are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the different products as claimed are used in different processes of using the products as claimed.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for one group is not required for the other groups, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

Art Unit: 1651

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

Vera Afremova

AU 1651

December 13, 2005

A handwritten signature in black ink, appearing to read 'V. Afremova', with a stylized flourish at the end.

VERA AFREMOVA
PRIMARY EXAMINER